

## REMARKS

Applicant respectfully traverses and requests reconsideration.

The Applicant's Agent wishes to thank the Examiner for the courtesies extended during the telephone interview of May 17, 2005. However, the faxed Interview Summary dated May 18, 2005, has an error in that neither the Examiner's supervisor Chris Kelley, nor Chris Reckamp were present.

As a preliminary matter, Applicant wishes to thank the Examiner for the notice that claims 5 and 27 are allowed and claims 9, 10 and 26 would be allowed if rewritten in independent form. Applicant has adjusted claims 9, 10, and 26 to be in independent form as new claims 30, 31, and 32. Accordingly, the dependent claims 9, 10, and 26 have been requested canceled. Also, Applicant wishes to note that claims have been amended. Claims 1-20 and 28-29 have been amended for clarification and/or minor punctuation corrections. Claims 2, 4, 6, 20 and 29 have also been amended to correct for antecedent issues. Claims 25 and 26 have been amended to correct for minor wording changes.

In the Detailed Action of the Office Action dated April 20, 2005, the Office has requested an Election/Restriction in order to avoid burden on the Examiner and allow for further prosecution. The Election/Restrictions section states, "This application contains claims directed to the following patentably distinct species of the claimed invention: Figures 3-10 contain distinctly different methods for rate control for a constant-bit-rate finite-buffer-size video encoder".

Also, as a preliminary matter, Applicant wishes to note the timing of this restriction request with respect to claims 1-27 which were originally filed. According to MPEP § 811 "37 CFR 1.142(a), second sentence states: [i]f the distinctness and independence of the invention be

clear, such requirement will be made before any action upon the merits; however, it may be made at any time before final action in the case at the discretion of the examiner.” Applicant wishes to note that the method requirements to be restricted have been examined numerous times as these requirements have been part of a first Office Action (OA), a FINAL OA, and another first OA after an RCE. Additionally, numerous claims have been allowed at this time, and thus a restriction of species at this time seems inappropriate as to at least claims 1-27.

In any event, in a telephone interview held on May 17 between patent agent Donald Andruska and examiner Eric Rekstad, agreement was reached as to what election would be allowed and made. A faxed Interview Summary was received by Donald Andruska from the USPTO on May 18, 2005 with the following substance: “After thorough examination and discussion of the Figures and claims related to the Election Requirement sent March 20, 2005, it was agreed upon by the examiner and attorney that a response electing Figures 1-5 and 9 (related to claims 1-5, 19, 20-28 and 29) would be held as a proper response.”

Applicant agrees with the Interview Summary, and respectfully elects Figures 1-5 and 9 (related to claims 1-5, 19-29) to be examined and notes that claims 30, 31, and 32 have been allowed.

The Examiner is invited to contact the below-listed attorney if the Examiner believes that a telephone conference will advance the prosecution of this application.

Respectfully submitted,

Date: May 20, 2005

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